

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for use of the Clerk of the Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

D'ARRIGO BROS. CO. OF NEW YORK, INC

DEFENDANTS

EDDIE SHORE

ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

KREINCES & ROSENBERG, P.C.
900 MERCHANTS CONCOURSE
WESTBURY, NEW YORK 11590
(516) 227-6500

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Action pursuant to the Perishable Agricultural Commodities Act 7 USC §499 (e)(c) for the enforcement of trust benefits.

Has this or a similar case been previously filed in SDNY at anytime? No ☒ Yes ☐ Judge Previously Assigned _____

If yes, was this case Vol. ☐ Invol. ☐ Dismissed, No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [X] IN ONE BOX ONLY)

NATURE OF SUIT

CONTRACT		TORTS		ACTIONS UNDER STATUTES	
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 140 NEGOTIABLE	<input type="checkbox"/> 315 AIRPLANE	<input type="checkbox"/> 365 PERSONAL INJURY	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 410 ANTI-TRUST
<input type="checkbox"/> 150 RECOVERY OF	<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL	<input type="checkbox"/> 368 ASBESTOS	<input type="checkbox"/> 424 WITHDRAWAL	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 152 RECOVERY OF	<input type="checkbox"/> 152 RECOVERY OF	<input type="checkbox"/> 330 FEDERAL	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 425 WITHDRAWAL	<input type="checkbox"/> 450 COMMERCE/ICC
<input type="checkbox"/> 153 RECOVERY OF	<input type="checkbox"/> 153 RECOVERY OF	<input type="checkbox"/> 340 MARINE	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 426 WITHDRAWAL	<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 160 STOCKHOLDERS'	<input type="checkbox"/> 160 STOCKHOLDERS'	<input type="checkbox"/> 345 MARINE PRODUCT	<input type="checkbox"/> 380 OTHER PERSONAL	<input type="checkbox"/> 427 WITHDRAWAL	<input type="checkbox"/> 470 RACKETEER
<input type="checkbox"/> 190 OTHER CONTRACT	<input type="checkbox"/> 190 OTHER CONTRACT	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> 428 WITHDRAWAL	<input type="checkbox"/> 480 INFLUENCED &
<input type="checkbox"/> 195 CONTRACT	<input type="checkbox"/> 195 CONTRACT	<input type="checkbox"/> 355 MOTOR VEHICLE	<input type="checkbox"/> 388 PROPERTY DAMAGE	<input type="checkbox"/> 429 WITHDRAWAL	<input type="checkbox"/> 490 CORRUPT
<input type="checkbox"/> 210 LAND	<input type="checkbox"/> 210 LAND	<input type="checkbox"/> 360 OTHER PERSONAL	<input type="checkbox"/> 390 OTHER PERSONAL	<input type="checkbox"/> 430 WITHDRAWAL	<input type="checkbox"/> 500 ORGANIZATION
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 365 OTHER PERSONAL	<input type="checkbox"/> 395 OTHER PERSONAL	<input type="checkbox"/> 431 WITHDRAWAL	<input type="checkbox"/> 510 ACT
<input type="checkbox"/> 230 RENT LEASE	<input type="checkbox"/> 230 RENT LEASE	<input type="checkbox"/> 370 OTHER PERSONAL	<input type="checkbox"/> 400 OTHER PERSONAL	<input type="checkbox"/> 432 WITHDRAWAL	<input type="checkbox"/> 520 (RICO)
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 375 OTHER PERSONAL	<input type="checkbox"/> 405 OTHER PERSONAL	<input type="checkbox"/> 433 WITHDRAWAL	<input type="checkbox"/> 530 SELECTIVE SERVICE
<input type="checkbox"/> 246 TORT PRODUCT	<input type="checkbox"/> 246 TORT PRODUCT	<input type="checkbox"/> 380 OTHER PERSONAL	<input type="checkbox"/> 410 OTHER PERSONAL	<input type="checkbox"/> 434 WITHDRAWAL	<input type="checkbox"/> 540 SECURITIES/
<input type="checkbox"/> 290 ALL OTHER	<input type="checkbox"/> 290 ALL OTHER	<input type="checkbox"/> 385 OTHER PERSONAL	<input type="checkbox"/> 415 OTHER PERSONAL	<input type="checkbox"/> 435 WITHDRAWAL	<input type="checkbox"/> 550 COMMODITIES/
		<input type="checkbox"/> 390 OTHER PERSONAL	<input type="checkbox"/> 420 OTHER PERSONAL	<input type="checkbox"/> 436 WITHDRAWAL	<input type="checkbox"/> 560 EXCHANGE
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		<input type="checkbox"/> 465 OTHER PERSONAL	<input type="checkbox"/> 495 OTHER PERSONAL	<input type="checkbox"/> 451 WITHDRAWAL	<input type="checkbox"/> 902 UNDER EQUAL
		<input type="checkbox"/> 470 OTHER PERSONAL	<input type="checkbox"/> 500 OTHER PERSONAL	<input type="checkbox"/> 452 WITHDRAWAL	<input type="checkbox"/> 903 ACCESS TO JUSTICE
		<input type="checkbox"/> 475 OTHER PERSONAL	<input type="checkbox"/> 505 OTHER PERSONAL	<input type="checkbox"/> 453 WITHDRAWAL	<input type="checkbox"/> 904 CONSTITUTIONALITY
		<input type="checkbox"/> 480 OTHER PERSONAL	<input type="checkbox"/> 510 OTHER PERSONAL	<input type="checkbox"/> 454 WITHDRAWAL	<input type="checkbox"/> 905 OF STATE STATUTES
		<input type="checkbox"/> 485 OTHER PERSONAL	<input type="checkbox"/> 515 OTHER PERSONAL	<input type="checkbox"/> 455 WITHDRAWAL	<input type="checkbox"/> 906 OTHER STATUTORY
		<input type="checkbox"/> 490 OTHER PERSONAL	<input type="checkbox"/> 520 OTHER PERSONAL	<input type="checkbox"/> 456 WITHDRAWAL	<input type="checkbox"/> 907 ACTIONS
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				<input type="checkbox"/> 500 WITHDRAWAL	

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____

JUDGE: _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

JURY DEMAND: ☒ YES ☐ NO

PLACE AN X IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify Dist.)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

PLACE AN X IN ONE BOX ONLY)

☐ 1 U.S. PLAINTIFF☐ 2 U.S. DEFENDANT

BASIS OF JURISDICTION

☒ 3 FEDERAL QUESTION
(U.S. NOT A PARTY)☐ 4 DIVERSITY
 IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [x] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF'S ADDRESS AND COUNTY (Calendar Rule 4(A))

D'ARRIGO BROS. CO. OF NEW YORK, INC.

515 NYC Terminal Market

Bronx, New York 10474

County of Bronx

DEFENDANT'S ADDRESS AND COUNTY (Calendar Rule 4(A))

EDDIE SHORE

P.O. Box 503

South River, NJ 08882

DEFENDANT'S ADDRESS UNKNOWN

 REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE
ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE CLASSIFIED:

☐ Expedited
 ☒ Standard
 ☐ Complex
 ☐ Unknown

Check one: THIS ACTION SHOULD BE ASSIGNED TO :

☐ WHITE PLAINS
 ☒ FOLEY SQUARE

(DO NOT check either box if this is a PRISONER PETITION.)

DATE:

April __, 2007

SIGNATURE OF ATTORNEY OF RECORD

/s/ LEONARD KRENCES, ESQ.

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[x] YES (DATE ADMITTED Mo __ Yr __)

Attorney Bar Code # LK-6524

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

James M. Parkison, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

United States District Court

Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE SAND

D'ARRIGO BROS. CO. OF NEW YORK, INC.,

Plaintiff,

SUMMONS IN A CIVIL ACTION

-against-

Case No.:

EDDIE SHORE

Defendant.

07 CV 3604

TO: (Name and Address of Defendant)

EDDIE SHORE

P.O. Box 503

South River, New Jersey 08882

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court
and serve upon

PLAINTIFFS' ATTORNEYS: (name and address)

KREINCES & ROSENBERG, P.C.

900 Merchants Concourse

Westbury, New York 11590

(516) 227-6500

an answer to the complaint which is herewith served upon you, within **twenty (20)** days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against
you for the relief demanded in the complaint.

J. MICHAEL McMAHON

CLERK

MAY 07 2007

DATE

Melanie L. Lopez
BY DEPUTY CLERK

Service of the Summons and Complaint was made by me¹

Date: _____

Name of Server _____

Title: _____

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____☐ Other (specify): _____**STATEMENT OF SERVICE FEES**

TRAVEL: _____

SERVICES: _____

TOTAL: _____

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____

Date

Signature of Server _____

Address of Server _____

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D'ARRIGO BROS. CO. OF NEW YORK, INC.,

Plaintiff,

-against-

EDDIE SHORE,

Defendant.

JUDGE SAND

Case No.:

07 CV 3604

**COMPLAINT (to Enforce Payment
From Produce Trust)**

D'ARRIGO BROS. CO. OF NEW YORK, INC. (hereinafter referred to as "D'ARRIGO" or "plaintiff"), for its complaint against defendant, alleges:

JURISDICTION AND VENUE

1. Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c)(4), (hereinafter "the PACA"), 28 U.S.C. §1331 and 28 U.S.C. §1332.
2. Venue in this District is based on 28 U.S.C. §1391 in that the events constituting the claims arose in this District.

PARTIES

3. Plaintiff is a corporation engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce. At all times pertinent herein, plaintiff was licensed as a dealer under the provisions of PACA.
4. Defendant, EDDIE SHORE (hereinafter referred to as "SHORE" or "defendant"), upon information and belief, is a New Jersey corporation with a principal place of business at P.O.

Box 503, South River, New Jersey, and was at all times pertinent herein, a dealer and commission merchant and subject to and licensed under the provisions of the PACA as a dealer and commission merchant.

5. At all times hereinafter mentioned, the defendant was a dealer and commissioned merchant and subject to and licensed under the provisions of the PACA as a dealer and commissioned merchant.

GENERAL ALLEGATIONS

6. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. §499e(c).

7. Plaintiff sold and delivered to defendant, in interstate commerce, \$22,925.00 worth of wholesale quantities of produce.

8. Defendant has failed to pay for the produce when payment was due, despite repeated demands and presently owes plaintiff \$22,925.00.

9. At the time of receipt of the produce, plaintiff became a beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce-related assets, including all funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of each defendant since the creation of the trust.

10. Plaintiff preserved its interest in the PACA trust in the amount of \$22,925.00 and remains a beneficiary until full payment is made for the produce.

11. The defendant is experiencing severe cash flow problems and is unable to pay plaintiff for the produce plaintiff supplied.

12. The defendant's failure and inability to pay shows that the defendant is failing to maintain sufficient assets in the statutory trust to pay plaintiff and is dissipating trust assets.

**COUNT 1 AGAINST DEFENDANT
(FAILURE TO PAY TRUST FUNDS)**

13. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 12 above as if fully set forth herein.

14. The failure of defendant to make payment to plaintiff of trust funds in the amount of \$22,925.00 from the statutory trust is a violation of the PACA and PACA regulations, and is unlawful.

WHEREFORE, plaintiff requests an order enforcing payment from the trust by requiring immediate payment of \$22,925.00 to plaintiff.

**COUNT 2 AGAINST DEFENDANT
(FAILURE TO PAY FOR GOODS SOLD)**

15. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 14 above as if fully set forth herein.

16. Defendant failed and refused to pay plaintiff \$22,925.00 owed to plaintiff for produce received by defendant from plaintiff.

WHEREFORE, plaintiff requests judgment in the amount of \$22,925.00 against the defendant.

**COUNT 3 AGAINST DEFENDANT
(INTEREST AND ATTORNEY'S FEES)**

17. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 16 above as if fully set forth herein.

18. As a result of defendant's failure to make full payment promptly of \$22,925.00, plaintiff has lost the use of said money.

19. As a further result of defendant's failure to make full payment promptly of \$22,925.00, plaintiff, has been required to pay attorney's fees and costs in order to bring this action to require defendant to comply with their statutory duties.

WHEREFORE, plaintiff requests judgment against the defendant for prejudgment interest, costs and attorneys fees.

Dated this 30th day of April, 2007.

Respectfully submitted,

KREINCES & ROSENBERG, P.C.

By: 

LEONARD KREINCES (LK/6524)

Attorneys for Plaintiff

900 Merchants Concourse, Suite 305

Westbury, New York 11590

(516) 227-6500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D'ARRIGO BROS. CO. OF NEW YORK, INC.,

Plaintiff,

-against-

CASE NUMBER:

EDDIE SHORE,

Defendant.

Pursuant to Rule 7 of the Local Rules of the U.S. District Court for the Southern and Eastern Districts of New York and to enable Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for **Plaintiff** (A private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said party which are publicly held.

NONE

Date: Westbury, New York
April 30, 2007

KREINCES & ROSENBERG, P.C.

By: 

LEONARD KREINCES (LK/6524)
Attorneys for Plaintiff
900 Merchants Concourse, Suite 305
Westbury, New York 11590
(516) 227-6500